IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC.CIVIL APPLICATION No. 2395 of 2006
In
SPECIAL CIVIL APPLICATION No. 8575 of 1989

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAYRAJ N.ZALA - Applicant
Versus
BHAGUBHAI S.PATEL MANAGING DIRECTOR OR HIS & 1- Opponents

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Appearance :
MR PH PATHAK for Applicant(s) : 1,
None for Opponent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE
and
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 27/09/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.L.DAVE)

This application is preferred by the applicant

under the Contempt of Courts Act and under Article 215 of the Constitution of India, alleging willful disobedience of order passed by this Court in Special Civil Application No.8575 of 1989 on September 20, 2004 whereunder the opponents were given certain directions which have allegedly been not complied with. A notice came to be issued on them by the applicant through his Advocate on 25th January, 2006 (Annexure-B).

2. When the matter came up for admission hearing in response to a specific question put to the learned advocate for the applicant regarding the bar of limitation on moving such an application contemplated under Section 20 of the Contempt of Courts Act, learned Advocate, Mr.Pathak, submitted that the application is preferred not only under the provisions of the Contempt of Courts Act but, also, under Article 215 of the Constitution of India and for taking cognizance and taking action under Article 215 of the Constitution of India, period of limitation prescribed under Section 20 of the Contempt of Courts Act would not be applicable. According to him wherever a gross contempt is shown to the court, the Court has powers to initiate action for contempt under Article 215 of the Constitution of India.

He submitted that in the instant case opponents are instrumentalists of the State and they ought to prove themselves to be ideal employer which they have failed to do by not complying with the direction of the Court given in Special Civil Application No.8575 of 1989 in order dated 20th September, 2004, inspite of the fact that notice was issued on them on 25th January, 2006. In support of his submission learned Advocate Mr.Pathak relied upon the decision in case of **PALLAV SHETH VS. CUSTODIAN AND OTHERS, reported in A.I.R. 2001 SC 2763**. He submitted therefore that this application would not be barred by limitation and may be considered on merits.

3. We have examined the question of limitation from the angle suggested by learned Advocate, Mr.Pathak, for the applicant.

4. There can be no dispute that this Court is a court of record and is empowered to initiate contempt proceeding and punish the contemtnor under Article 215 of the Constitution of India. There also cannot be any dispute that no limitation is prescribed for initiation of action under Article 215 of the Constitution of India. But, when there is a specific law dealing with question

of contempt of court enacted by legislature and when such enactment contemplates a period of limitation, whether in all cases such provision can be ignored and virtually made redundant by resorting to Article 215 of the Constitution of India, is the question that is required to be addressed to by us. The decision relied upon by learned Advocate, Mr.Pathak, in case of of **Pallav Sheth (supra)** is a square answer to that question.

5. In our opinion the observations made in paragraphs 30, 39, 40, 41 and 44 of the judgment are relevant. Their Lordships have ultimately come to a conclusion that the proper construction to be placed on Section 20 must be that action must be initiated either by filing an application or by the Court issuing notice suo motu within a period of one year from the date on which the contempt is alleged to have been committed. While coming to a conclusion their Lordships have observed that, *the Court would not be helpless only on account of the period of limitation contemplated under Section 20 of the Act having expired where it is found that the period of limitation expired on account of a fraud having been played by a party / alleged contemtnor. In such a situation the Court would not be helpless or*

powerless but can take the action resorting to Article 215 of the Constitution. But in other cases the general principle would be that the provisions of an enacted law and the Constitution has to be read harmoniously and that harmonious construction would be that action must be initiated within period of one year of alleged contempt as contemplated by Section 20 of the Act.

5.1 The decision in case of **Pallav Sheth (supra)** relied upon by the learned Advocate, Mr.Pathak, does not lay down the proposition canvassed by learned Advocate, Mr.Pathak.

6. It is nobody's case that any fraud is played by the alleged contemtnor. Even the applicant has also not taken any initiative after the order was passed by this Court in his favour. He took action for the first time after the period of limitation was over by issuing a notice on 25th January, 2006. We may hasten to add that only a typed copy of notice is annexed to the application. Neither office copy nor the acknowledgment slip indicating service of notice to the opponent is annexed to this application, but that may be a little relevance for deciding the question that arises for

determination by this Court.

7. In light of what is held by the Apex Court in the case of **Pallav Sheth (supra)**, it cannot be said that because application is initiated also under Article 215 of the Constitution of India, Section 20 of the Contempt of Courts Act would not be applicable. The provisions have to be interpreted harmoniously and as per such an interpretation given by the Apex Court it is in cases like fraud which has resulted into lapse period of limitation and where it is found that there is blatant willful disobedience of the Court's order, the Court may initiate action under Article 215 of the Constitution of India without feeling powerless on account of Section 20 of the Act. It is not that High Court has no power to take action in exercise of power under Article 215 of Constitution of India but ordinarily provisions of the Act would apply and govern the proceedings for contempt. It is only in exceptional circumstances that Court may resort to Article 215 of Constitution of India. Mere mention of Article 215 of Constitution of India in cause title of petition would not change the complexion. It is the Court who will consider whether circumstances and facts of the case require exercise of power under Article

215 of Constitution of India. In the case on hand there are no reasons for this Court to resort to Article 215 of Constitution of India. Undisputedly, the application is preferred after lapse of one year. As such, this application is hit by limitation and no action can be initiated.

7. We may also observe that the order which is sought to be implemented does not specify any time limit for implementation of the direction. In a very similar situation that arose before the Apex Court in case of **Union of India & Ors. Vs. M/s. Oswal Woollen Mills Ltd. and Others reported in A.I.R. 1984 SC 1264,** their Lordships observed thus:

"The High Court not having set any limit of time for the disposal of the applications, it was not for the writ petitioners to impose a time limit and demand that their applications should be disposed of forthwith. If the writ petitioners were aggrieved by the failure of the authorities to dispose of their applications expeditiously, it was open to them to seek a further direction from the Court fixing a limit of time within which the applications were to be disposed of. The authorities could not be said to have committed any contempt of Court, even prima facie, by their mere failure to take action in the matter of the disposal of the applications of the writ petitioners."

8. In light of these observations also, this application cannot be entertained. Application, therefore, must fail and stands rejected.

(A.L.DAVE, J.)

(BANKIM N. MEHTA, J.)

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